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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 3 2012

*Uniform Issue List: 408.03-00*

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XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

**Legend:**

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Taxpayer B = XXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX

IRA Y = XXXXXXXXXXXXXXXXXXXX

Amount C = XXXXXXXXXXXXXXXXXXXX

Amount D = XXXXXXXXXXXXXXXXXXXX

Credit Union E = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Year 3 = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxxxxxx:

This is in response to your request, dated April 12, 20 , as supplemented by correspondence dated May 23, 20 , July 26, 20 , August 31, 20 , and November 8, 20 , in which you request a waiver of the 60-day rollover

requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from IRA X totaling Amount C. Taxpayer A's spouse, Taxpayer B, represents that she received a distribution from IRA Y totaling Amount D. Taxpayer A and Taxpayer B (hereinafter collectively referred to as Taxpayers) assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was because Credit Union E did not inform them of the 60-day rollover requirement.

The Taxpayers each executed a Credit Union E Withdrawal Request form on Date 1, which stated in bold lettering that "If you plan to rollover these funds, you are allowed one rollover in a 12 month period AND the funds must be reinvested within 60 calendar days." The funds from IRAs X and Y were distributed on Date 2.

The Taxpayers share joint checking and savings accounts and also file their taxes jointly. Amount C was deposited into the Taxpayers' joint savings account at Credit Union E. Amount D was deposited into Taxpayers' joint checking account at Credit Union E. During the months following the distributions, amounts were transferred from the savings account to the checking account, as needed, in order to pay various expenses, including, but not limited to, miscellaneous living expenses, home equity loan payments, insurance premiums, medical expenses, and federal and state income tax liabilities.

While completing the Taxpayers' joint tax return for Year 3, Taxpayer A discovered that the tax liability associated with the distributions from IRAs X and Y were much greater than he and Taxpayer B had anticipated. Consequently, Taxpayer A and Taxpayer B each filed a request for a waiver of the 60-day period contained in section 408(d)(3) of the Code.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amount C and Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to, IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(a) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the

use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period, but was prevented from doing so because of one of the factors enumerated in Rev. Proc. 2003-16; for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. The Taxpayers have asserted that Credit Union E did not inform them of the 60-day rollover requirement. However, the Taxpayers also acknowledge that Credit Union E had them complete withdrawal forms that stated the 60-day rollover requirement. Accordingly, we find that the Taxpayers have not alleged that any of the factors enumerated in Rev. Proc. 2003-16 prevented them from timely completing the rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount C from IRA X, and Amount D from IRA Y.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxx (ID xxxxxxxxxxxx) at (xxx) xxx-xxxx. Please address all correspondence to SE:T:EP:RA:T 3.

Sincerely yours,



Laura B. Warshawsky, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose